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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX DIAZ HUERTA,

Defendant and Appellant.

B289988

(Los Angeles County
Super. Ct. No. TA143691)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael Shultz, Judge. Affirmed.

Moaddel Law Firm, Daniel Moaddel; and Jeffrey Lewis
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Scott A. Taryle, and Rene Judkiewicz,
Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Alex Diaz Huerta of first degree murder (Pen. Code, § 187, subd. (a))¹ for stabbing to death his estranged girlfriend, Erica Estrada. The jury also found true that Huerta personally used a deadly and dangerous weapon in commission of the murder. (§ 12022, subd. (b)(1).) The trial court sentenced Huerta to 25 years to life for the murder, plus one additional year for the weapon enhancement.

Huerta contends that the trial court erred by refusing to instruct the jury on voluntary manslaughter under a heat of passion theory. We disagree and affirm.

FACTS AND PROCEEDINGS BELOW

Huerta and Estrada dated from at least November 2014, when Estrada brought Huerta home for Thanksgiving dinner, until shortly before May 6, 2015, when Huerta stabbed Estrada to death in a motel room.

In the weeks leading up to the killing, Huerta sent Estrada numerous text and Facebook messages in which he threatened to kill or stab her. On April 24, he wrote, “Like a pig getting slaughter[ed],” and “[t]hat’s what you need.” Two days later, he wrote to her, “I just want to stick this [knife] in you.” The next day, he wrote, “I’m gonna be the happiest ever, slash your neek neek [sic] and then drink blood.” On two separate occasions around this time, he wrote that he wanted to “shank” Estrada.

At some point in late April, Estrada told a friend via Facebook that she had broken up with Huerta. When another friend asked her to turn on her location in Facebook, Estrada replied, “Hell no. Someone is trying to find me.” On the evening of May 1, Huerta wrote to Estrada that he was “going to the bridge” and hoped that Estrada would not “forget about [him] and go to [his] funeral.”

¹ Unless otherwise specified, subsequent statutory references are to the Penal Code.

Estrada responded, “Alex, please don[']t. . . . [I’m] sorry, but I just can[']t take that chance. . . . [W]hat if u would have hurt me[?]” On either the same day or the next, Huerta sent a Facebook message to a mutual friend named George E. offering to pay George E. to bring Estrada to him.

On May 5, the day before the stabbing, Huerta and Estrada messaged one another on Facebook. Estrada wrote, “I love U.” She then wrote, “But you already know.” Huerta replied, “Or are you trying to make a fool out of me,” “I hope you do,” and “[l]ove me.” Estrada responded, “But I can’t be with U, Alex.” That evening Huerta wrote, “Why you don’t answer,” “[y]ou don’t even love me,” and “[c]an’t keep a promise?” Estrada responded, “I know love but at least we’re going to see each other tonight, I’m excited.”

The following day, May 6, Estrada went to a room at the Economy Inn motel in Lynwood with her friend Angel E., where two other men were also present. She told Angel E. that she had invited Huerta to come to the motel room. She planned to break up with him but wanted other people to be present. She asked Angel E. to protect her if Huerta became violent.

Huerta’s mother drove Huerta to the motel that evening. When Huerta knocked on the motel room door, someone opened the door, and Huerta walked straight toward Estrada shouting, “Let’s go home. Let’s go home.” Estrada, who was lying down on a bed in the room, refused, and moved away from Huerta. Huerta took one of Estrada’s bags and left the room with it. Estrada was angry and said, “You got my stuff.”

A few minutes later, Huerta returned to the room and began moving toward Estrada with his hands concealed in the pockets of his hoodie. Huerta again asked Estrada to leave with him, and she again refused, saying she just wanted to talk with him. He walked toward her, and Angel E. moved to get in between them.

Angel E. told Estrada to go into the bathroom. Angel E. suggested that he and Huerta should go outside. Huerta appeared to agree with this idea and started to move toward the exit, but then Huerta suddenly turned and lunged toward the bathroom. Angel E. grabbed hold of Huerta, and one of the other men tried to assist, but Huerta was able to break free and went into the bathroom.

In the bathroom, Huerta stabbed Estrada in the abdomen, severing her aorta. She screamed, "You stabbed me, you stabbed me." Huerta walked out of the bathroom and left the motel room. Estrada stumbled out of the bathroom and collapsed. While George E. was on the phone with a 911 operator, Huerta returned to the room with his mother, who had driven Huerta to the motel. Huerta picked up Estrada and carried her back to a car, and Huerta's mother drove her to a hospital. Estrada was pronounced dead at the hospital.

In a police interview the following day, Huerta claimed that he had last seen Estrada about a week earlier. He then acknowledged being present at the motel with Estrada, but claimed that four or five men had jumped him. He told police that Estrada was injured while trying to protect him from the men.

DISCUSSION

Huerta contends that the trial court violated his federal and state constitutional rights to due process and a jury trial by refusing to instruct the jury on the lesser included offense of voluntary manslaughter. According to Huerta, there was substantial evidence to raise a question as to whether he killed Estrada in a heat of passion upon provocation. We disagree.

Voluntary manslaughter is a lesser included offense of murder, in which the defendant kills the victim without malice. (Pen. Code, § 192, subd. (a).) A defendant may commit voluntary

manslaughter rather than murder if he kills “upon a sudden quarrel or heat of passion.” (*Ibid.*) “The heat of passion requirement for manslaughter has both an objective and a subjective component. [Citation.] The defendant must actually, subjectively, kill under the heat of passion. [Citation.] But the circumstances giving rise to the heat of passion are also viewed objectively. . . . ‘[T]his heat of passion must be such a passion as would naturally be aroused in the mind of an ordinarily reasonable person under the given facts and circumstances,’ because ‘no defendant may set up his own standard of conduct and justify or excuse himself because in fact his passions were aroused, unless further the jury believes that the facts and circumstances were sufficient to arouse the passions of the ordinarily reasonable man.’” (*People v. Steele* (2002) 27 Cal.4th 1230, 1252–1253.) In applying this objective component, “the law of provocation focuses on ‘“emotion reasonableness”’ (i.e., ‘whether “the defendant’s *emotional* outrage or *passion* was reasonable” ’), not on ‘“act reasonableness”’ (i.e., ‘whether “a reasonable person in the defendant’s shoes would have responded or *acted* as violently as the defendant did.” ’)” (*People v. Wright* (2015) 242 Cal.App.4th 1461, 1481–1482.)

The trial court has an obligation to instruct the jury “on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present.” (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) “[I]n a murder prosecution, this includes the obligation to instruct on every supportable theory of the lesser included offense of voluntary manslaughter, not merely the theory or theories which have the strongest evidentiary support, or on which the defendant has openly relied.” (*Id.* at p. 149.)

“We review de novo a trial court’s failure to instruct on a lesser included offense.” (*People v. Millbrook* (2014)

222 Cal.App.4th 1122, 1137.) In so doing, “we review the evidentiary support for an instruction ‘in the light most favorable to the defendant’ [citation] and should resolve doubts as to the sufficiency of the evidence to warrant instructions ‘ “in favor of the accused.” ’ ” (*People v. Wright, supra*, 242 Cal.App.4th at p. 1483.)

In this case, Huerta’s attorney requested a jury instruction on voluntary manslaughter on the basis of heat of passion, but the trial court rejected the request on the ground that there was no substantial evidence of provocation. Huerta contends that this was error. He claims that sufficient evidence supported a heat of passion instruction because Estrada led him to believe that there would be a romantic encounter at the motel, and then took him by surprise by having three men present in the motel room when he arrived. We hold that there was insufficient provocation to arouse the passions of an ordinary person in the circumstances, and for this reason, we need not decide whether there was substantial evidence that Huerta was in a subjective heat of passion when he killed Estrada.

First, there was minimal evidence in the record to indicate that Estrada provoked Huerta by misleading him about the nature of their encounter. The only evidence indicating that Estrada led Huerta to believe a romantic encounter would take place at the hotel was Estrada’s message from the night before that she was “excited” to see him. On the same day, however, Estrada also wrote that she “can’t be with U, Alex.” None of the evidence regarding Huerta’s behavior on the night of the stabbing indicates that he initially expected romance with Estrada. He traveled to the motel in the company of his mother, and when he entered the room, he did not appear confused by the men’s presence. Instead, he went straight toward Estrada and demanded that she leave with him. Moreover, there was no evidence that the men provoked Huerta to attack Estrada. Angel E. testified that he moved to restrain Huerta

only after Huerta had obtained a knife and suddenly began moving toward Estrada after she had hidden from him in the bathroom. In other words, the evidence indicates that Huerta decided to kill Estrada before Angel E. took any action against him.²

Furthermore, even if Estrada did mislead Huerta regarding the circumstances of their meeting at the hotel, her behavior was not sufficiently provocative to arouse passion “ ‘in the mind of an ordinarily reasonable person under the given facts and circumstances.’ ” (*People v. Steele, supra*, 27 Cal.4th at p. 1252.) To the extent Huerta felt extreme emotion upon seeing Estrada in the presence of three men, his “ ‘ “emotional outrage or passion was [not] reasonable.” ’ ” (*People v. Wright, supra*, 242 Cal.App.4th at p. 1482.)

Courts have required significantly greater provocation to justify a voluntary manslaughter instruction, as demonstrated in the cases Huerta cites in his brief. Thus, in *People v. Bridgehouse* (1956) 47 Cal.2d 406, 409 (*Bridgehouse*), abrogated on another ground by *People v. Lasko* (2000) 23 Cal.4th 101, 110, the defendant shot his wife’s lover after discovering him at home in the presence of his young child in violation of a restraining order. The Court reduced the defendant’s conviction to voluntary manslaughter on the grounds “that defendant’s wife was having an affair which had extended over a considerable period of time with the deceased; that she would neither approve of the defendant commencing an action

² Huerta’s statement to police the day after the killing is not sufficient evidence of provocation. The prosecution played a recording of the interview to the jury at trial. Huerta told police that the men in the hotel room “jumped” him. But Huerta also said that Estrada attempted to defend him from the men. Huerta’s statement, if believed, might explain why Huerta would have been provoked to attack the other men, but does not explain why he would attack Estrada.

for divorce nor would she forego seeing the victim of the crime; that the sight of the victim in his mother-in-law's home was a great shock to the defendant who had not expected to see him there or anywhere else." (*Bridgehouse, supra*, 47 Cal.2d at p. 413.) Similarly, in *People v. Berry* (1976) 18 Cal.3d 509, 513, the defendant's wife told him that she was having an affair with another man and spent two weeks "taunting" him about it. The Court held that the trial court erred by refusing to instruct the jury on voluntary manslaughter by heat of passion. (*Id.* at p. 512.) In this case, by contrast, Estrada was never married to Huerta, and there is no evidence that she had ever dated any of the men in the room, nor that they appeared to be engaging in any kind of sexual conduct when Huerta entered. Nor is there any evidence that Estrada attempted to taunt or humiliate Huerta. Huerta may have been surprised to see Estrada in the company of other men, but this alone is not sufficient provocation.

Finally, the trial court did not, as Huerta alleges, "suggest[] that [Huerta] was required to testify below and admit his role in the killing before being entitled to a manslaughter instruction." In addressing Huerta's argument regarding the instruction, the trial court acknowledged that the defendant's statements regarding his involvement in the crime were not determinative, and that "[t]here are times when there[are] inconsistencies in defense that you can request instructions if there's substantial evidence of" the defense. The court then asked: "So where's the substantial evidence of" provocation under a heat of passion? This was indeed the correct question to ask, and the trial court did not err in determining that there was no substantial evidence to support a jury instruction.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.